

Ex 17 - MCKMDL00355349-5415

Plaintiffs' Opposition to Defendants' Motion for Summary Judgment on Proximate Causation Grounds

Appendix B

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 30th day of April, 2008, by and between the United States Department of Justice, through the United States Attorney's Offices for the Districts of Maryland, Middle Florida, Southern Texas, Colorado, Utah and Eastern California ("United States") and McKesson Corporation including facilities doing business as McKesson Pharmaceuticals and McKesson Drug Company, ("McKesson") and collectively referred to as "the Parties."

RECITALS

1. McKesson is a Delaware corporation and is headquartered in San Francisco, California. Among other things, McKesson is in the business of distributing branded and generic prescription drugs, as well as over-the-counter medications, to retail pharmacies throughout the United States. In furtherance of this business objective, McKesson operates numerous distribution facilities in the United States, including six facilities more fully described in Attachment A to this Agreement ("the Six Facilities").
2. As more fully described in Attachment A, McKesson holds Certificates of Registration issued by the Drug Enforcement Administration ("DEA") authorizing it to distribute controlled substances from these facilities including the Six Facilities.
3. McKesson is required to operate the Six Facilities in accordance with the statutory and regulatory provisions of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* ("the CSA").
4. Each of the Six Facilities supplies prescription medications, including controlled substances, to retail pharmacies and other health care providers within the respective

jurisdictions as stated in Paragraph 8.

5. DEA is the Department of Justice component agency primarily responsible for administering the CSA and is vested with the responsibility of investigating CSA violations.

6. The Attorney General, through the United States Attorneys, has primary authority to bring civil actions to enforce the CSA in the Districts noted above. See 21 U.S.C. § 871 and 28 C.F.R. § 0.55(c).

7. Methadone, Hydrocodone, Phentermine, Fentanyl and Oxycodone are medications whose manufacture, distribution, sale and possession are regulated by DEA under the CSA. This includes a requirement to report customer orders for controlled substances that are suspicious as the term is defined under 21 C.F.R. § 1301.74(b).

8. The "Covered Conduct" shall mean the following alleged conduct:

A. Within the District of Maryland: From January 2005 through October 2006, McKesson-Landover sold approximately 3 million dosage units of hydrocodone to NewCare Pharmacy in Baltimore, and failed to report these sales as suspicious orders to DEA when discovered, as required by and in violation of 21 C.F.R. § 1301.74(b) and 21 U.S.C. § 842(a)(5). Further, from August 2006 to February 2007, McKesson-Landover sold large quantities of phentermine based products to Smeeta Pharmacy in Highland, Maryland and failed to report these sales as suspicious orders to DEA when discovered, as required by and in violation of 21 C.F.R. § 1301.74(b) and 21 U.S.C. § 842(a)(5);

B. Within the Middle District of Florida: In October 2005, McKesson-Lakeland sold approximately 2.1 million dosage units of hydrocodone to seven pharmacies in the Tampa area (Trelles Pharmacy, BiWise Drugs, Universal RX, United Prescription Service, Accumed Rx Medipharma RX and Avee Pharmacy) and failed to report these sales as suspicious orders to DEA when discovered, as required by and in violation of 21 C.F.R. § 1301.74(b) and 21 U.S.C. § 842(a)(5);

C. Within the Southern District of Texas: From February to September 2007, McKesson-Conroe sold approximately 2.6 million dosage units of hydrocodone to Mercury Drive Pharmacy and Maswoswe's Alternative Pharmacy and failed to report these sales as suspicious orders to DEA when discovered, as required by and in violation of 21 C.F.R. § 1301.74(b) and 21 U.S.C. § 842(a)(5);

D. Within the District of Colorado: From September 2005 through November 2007, McKesson-Aurora sold large quantities of hydrocodone to three Colorado pharmacies (Brighton Pharmacy in Brighton, Colorado; Western States Pharmacy in Brighton, Colorado; and St. Vrain's Pharmacy in Lyons, Colorado), and failed to report these sales as suspicious orders to DEA when discovered, as required by and in violation of 21 C.F.R. § 1301.74(b) and 21 U.S.C. § 842(a)(5);

E. Within the District of Utah: From January 2005 through October 2007, McKesson-Salt Lake City sold approximately 824,000 dosage units of hydrocodone, Oxycodone, Fentanyl and Methadone to the Blackfeet Clinic in Browning, Montana, and failed to report these sales as suspicious orders to DEA when discovered, as required by and in violation of 21 C.F.R. § 1301.74(b) and 21 U.S.C. § 842(a)(5);

F. Within the Eastern District of California: From October 2007 through June 2007, McKesson-West Sacramento suffered the theft or significant loss of controlled substances on twenty-eight separate occasions, and failed to timely submit required theft and loss reports to DEA, in violation of 21 C.F.R. §§ 1301.74(c) and 1301.76(b), and 21 U.S.C. § 842(a)(5).

9. By entering into this Agreement, McKesson does not admit to the violations alleged as a result of any DEA investigation, or to any violation of law, liability, fault, misconduct, or wrongdoing. McKesson explicitly denies any allegations of violations of the CSA or DEA regulations and represents that the company has defenses to the violations alleged by the government.

10. At all times relevant to the activity alleged in these Recitals and Attachments, the CSA (21 U.S.C. § 842(c)(1)), authorized the imposition of a civil penalty of up to \$25,000 for each violation of the Section, except that violations of § 842(a)(5) (record keeping and reporting violations) are subject to a civil penalty of up to \$10,000 for each violation.

11. To avoid the delay, expense, inconvenience and uncertainty of litigation of these claims, the Parties agree to settle, compromise, and resolve all existing or potential claims for civil penalties the United States may have against McKesson under § 842 of the CSA based on the Covered Conduct as further described in Paragraphs 13 and 14 below.

12. This Agreement is neither an admission of liability by McKesson nor a concession by the United States that its claims are not well founded. In consideration of the mutual promises, covenants, and obligations set forth in this Agreement, the Parties agree as follows:

TERMS AND CONDITIONS

13. McKesson shall pay to the United States the sum of Thirteen Million, Two Hundred Fifty Thousand Dollars (\$13,250,000) (the "Settlement Amount") within thirty (30) days of the effective date of this Agreement, payable as follows:

A. For Conduct Alleged to have Occurred within the District of Maryland: McKesson shall pay the sum of Two Million Dollars (\$2,000,000). Payment shall be by electronic funds transfer to the United States Attorney's Office, District of Maryland, pursuant to instructions provided by the United States.

B. For Conduct Alleged to have Occurred within the Middle District of Florida: McKesson shall pay the sum of Seven Million Four Hundred Fifty-Six Thousand Dollars (\$7,456,000). Payment shall be by electronic funds transfer to the United States Attorney's Office, Middle District of Florida, pursuant to instructions provided by the United States.

C. For Conduct Alleged to have Occurred within the Southern District of Texas: McKesson shall pay the sum of Two Million Dollars (\$2,000,000). Payment shall be by electronic funds transfer to the United States Attorney's Office, Southern District of Texas, pursuant to instructions provided by the United States.

D. For Conduct Alleged to have Occurred within the District of Colorado: McKesson shall pay the sum of One Million Dollars (\$1,000,000). Payment shall be by electronic funds transfer to the United States Attorney's Office, District of Colorado, pursuant to instructions provided by the United States.

E. For Conduct Alleged to have Occurred within the District of Utah: McKesson shall pay the sum of Five Hundred Forty-Four Thousand Dollars (\$544,000). Payment shall be by electronic funds transfer to the United States Attorney's Office, District of Utah, pursuant to instructions provided by the United States.

F. For Conduct Alleged to have Occurred within the Eastern District of California: McKesson shall pay the sum of Two Hundred Fifty Thousand Dollars (\$250,000). Payment shall be by electronic funds transfer to the United States Attorney's Office,

Eastern District of California, pursuant to instructions provided by the United States.

14. In consideration of the undertakings by McKesson, the United States agrees to settle and relinquish all claims for civil penalties it may have under 21 U.S.C. § 842(c)(1) against McKesson, its officers, directors, and employees for possible violations of the CSA, and the regulations promulgated thereunder, based on the Covered Conduct.

15. McKesson fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which it has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the investigation, prosecution and settlement of this matter.

16. Notwithstanding any term of this Agreement, specifically reserved and excluded from its scope and terms as to any entity or person are the following:

- A. Any potential criminal liability;
- B. Any criminal, civil or administrative claims arising under Title 26, U.S. Code (Internal Revenue Service);
- C. Any administrative liability, including mandatory exclusion from any federal programs;
- D. Any liability to the United States for any conduct other than that covered by the release in Paragraph 14; and
- E. Any claims based on such obligations as are created by this agreement.

17. McKesson acknowledges that each of its DEA registered facilities is required to comply with the controlled substance record keeping and reporting requirements of the CSA. McKesson represents that it has taken good-faith actions to detect and prevent

diversion including agreeing to implement the policies and procedures that are the subject of an administrative settlement agreement between it and DEA dated May 2, 2008.

18. McKesson agrees that any and all costs it has or will incur in connection with this matter--including payment of the Settlement Amount under this Agreement, attorney's fees, costs of investigation, negotiation, and remedial action--shall be unallowable costs for government contract accounting and for Medicare, Medicaid, TriCare, and FEHBP reimbursement purposes.

19. This Agreement is not intended by the Parties to be, and shall not be interpreted to constitute, a release of any person or entity not identified or referred to herein.

20. This Agreement shall be governed by the laws of the United States. If a dispute arises under this Agreement between McKesson and an Office of the United States Attorney signing this Agreement, exclusive jurisdiction and venue shall lie in the federal judicial district of the Office with whom the dispute arose, and to the extent that state law applies to the dispute, the law of the State within the jurisdictional district shall apply. If a dispute arises under this Agreement between McKesson and more than one of the United States Attorney's Office signing this Agreement, exclusive jurisdiction and venue shall lie in the District of Maryland and to the extent that state law applies to the dispute, the law of Maryland shall apply.

21. The Parties agree that this Agreement does not constitute evidence or an admission by any person or entity, and shall not be construed as an admission by any person or entity, with respect to any issue of law or fact.

22. This Agreement constitutes the entire agreement between the Parties and cannot be amended except in writing and when signed by all the Parties to this Agreement.

23. McKesson acknowledges that its authorized representatives have read this Agreement and understand that as of its effective date, it will be a matter of public record.

24. Each person who signs this Agreement in a representative capacity warrants that he or she is fully authorized to do so.

25. This Agreement shall be effective on the date of signing by all the Parties. It may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

On Behalf of McKesson Corporation
One Post Street
San Francisco, California 94104

By: 

John H. Hammergren
President

Dated: April 28, 2008

By: 

Donald G. Walker
Senior Vice President

Dated: April 30, 2008


By: 

John A. Gilbert, Jr.
Hyman, Phelps & McNamara, P.C.
Counsel to McKesson Corporation

Dated: April 25, 2008

On Behalf of the United States

ROD J. ROSENSTEIN
United States Attorney
District of Maryland

By: 

Michael A. DiPietro
Assistant United States Attorney

Dated: April 28, 2008

Dated: April 29, 2008

ROBERT E. O'NEILL
United States Attorney
Middle District of Florida

By: 

Javier Guzman
Assistant United States Attorney

Dated: April 29, 2008

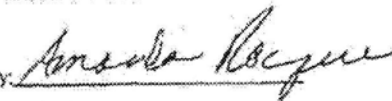
DONALD J. DeGABRIELLE
United States Attorney
Southern District of Texas

By: 

Jill Venezia
Assistant United States Attorney

Dated: April 28, 2008

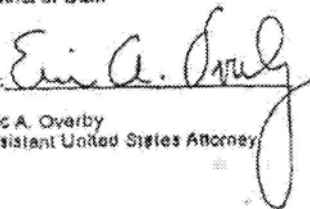
TROY A. EID
United States Attorney
District of Colorado

By: 

Amanda Rocque
Assistant United States Attorney


Dated: April 29, 2008

BRETT L. TOLMAN
United States Attorney
District of Utah

By: 

Eric A. Overby
Assistant United States Attorney

MCGREGOR W. SCOTT
United States Attorney
Eastern District of California

By: 

Catherine Swann
Assistant United States Attorney

Dated: April 29, 2008

ATTACHMENT A

(Six McKesson Facilities Referenced in Paragraph 1 of this Agreement)

1. 7721 Polk Street in Landover Maryland ("McKesson-Landover"), located within the District of Maryland and operating under DEA registration number PD0029567;
2. 1515 West Bella Vista Street in Lakeland Florida ("McKesson-Lakeland"), located within the Middle District of Florida and operating under DEA registration number PM 0000771;
3. 3301 Pollock Drive in Conroe Texas ("McKesson-Conroe"), located within the Southern District of Texas and operating under DEA registration number RM 0328408;
4. 14500 East 39th Avenue in Aurora Colorado ("McKesson-Aurora"), located within the District of Colorado and operating under DEA registration number PM 0018425;
5. 1900 South 4490 West in Salt Lake City Utah ("McKesson-Salt Lake City"), located within District of Utah and operating under DEA registration number PM0023046; and
6. 3775 Seaport Boulevard in West Sacramento California ("McKesson-West Sacramento"), located within the Eastern District of California and operating under DEA registration number PM 0021535.

Appendix C - Sales Accounts at Lakeland and Conroe Facilities authorized by DEA as an exception to Paragraph II.1(d).
(Lakeland DC Code = 195/Conroe Code = 115)

Account Name	DC	DEA	Address	City	St	Zip
CENTRAL TX VA-SPD TEMPLE	115	AB4451124	1901 SOUTH FIRST STREET	TEMPLE	TX	76504
VA MED CTR CH PINEVILLE	115	AD3351070	2495 SHREVEPORT HWY	PINEVILLE	LA	71360
FCI SEAGOVILLE	115	AF2404527	2113 NORTH HIGHWAY 175	SEAGOVILLE	TX	75159
FCI MIAMI	195	AF6804733	15801 SW 137TH AVENUE	MIAMI	FL	33177
FCI BASTROP	115	AF8942650	1341 HIGHWAY 95 NORTH	BASTROP	TX	78602
USPHS HOSPITAL UNIT-FCI	195	AK4351982	FED COR/501 CAPITAL CR NE	TALLAHASSEE	FL	32301
US PUBLIC HEALTH SERVICE	195	AU1434911	18201 SW 12 STREET	MIAMI	FL	33194
VA OP CLINIC PHARMACY	195	AV1230313	5599 N DIXIE HIGHWAY	OAKLAND PARK	FL	33334
VA LAKE CITY OUTPATIENT	195	AV4277845	619 S MARION STREET	LAKE CITY	FL	32025
VA MEDICAL CENTER/INPAT	195	AV4345559	1201 NW 16TH ST	MIAMI	FL	33125
VA MEDICAL CENTER OP PHCY	115	AV4515790	2002 HOLCOMBE BLVD	HOUSTON	TX	77030
VA MEDICAL CENTER-CH	115	AV4515815	510 EAST STONER AVE	SHREVEPORT	LA	71101
VA MED CTR GAINESVILLE IP	195	AV4671372	1601 SW ARCHER ROAD	GAINESVILLE	FL	32608
CENTRAL TX VETS-CONT WACT	115	AV4718714	4800 MEMORIAL DRIVE	WACO	TX	76711
VA OUTPATIENT CLINIC	195	AV5214488	1833 BOULVARD	JACKSONVILLE	FL	32206
VA MEDICAL CENTER IP	195	AV5307889	10000 BAY PINES BLVD	SAINT PETERSBURG	FL	33708
VA MEDICAL CTR-KERRVILLE	115	AV5318856	3600 MEMORIAL DRIVE	KERRVILLE	TX	78028
VA MED CT IP-AUDIE MURPHY	115	AV5546936	7400 MERTON MINTER BLVD	SAN ANTONIO	TX	78229
VA MC IP-OP NEW ORLEANS	115	AV6767719	1601 PERDIDO ST/RM#1F157	NEW ORLEANS	LA	70112
VA OP CLINIC BEAUMONT	115	AV7507164	3420 VETERAN CIRCLE	BEAUMONT	TX	77707
VA OUTPATIENT CLIN A&MMS	195	AV8635469	3033 WINKLER AVE EFT	FORT MYERS	FL	33916
VA OUTPATIENT CLINIC	115	AV9426760	7968 ESSEN PARK AVE	BATON ROUGE	LA	70809
ALA-COUSHATTA INDIAN IHS	115	BA7647502	129 DAYCARE ROAD	LIVINGSTON	TX	77351
FEDERAL PRISON CAMP PENSC	195	BB1595911	FED PRISON CAMP PENSCOLA	PENSACOLA	FL	32509
MICCOSUKEE HLTTH CTR IHS	195	BB3849518	MILE MARKER 70, US HWY 41	MIAMI	FL	33144
COUSHATTA HLT DEPART IHS	115	BC6820383	PO BOX 519 2003 CC BEL RO	ELTON	LA	70532
DEPT OF VET AFFAIRS MED	195	BD2256990	10 CALLE CASIA	SAN JUAN	PR	921
VA MEDICAL CENTER	195	BD2669995	7305 NORTH MILITARY TRAIL	WEST PALM BEACH	FL	33410
VA OUTPATIENT CLINIC	195	BD4632015	5201 RAYMOND STREET	ORLANDO	FL	32803
VETS NURSING HM/FL SVH2	195	BD5967180	1920 MASON AVENUE	DAYTONA BEACH	FL	32117
BALDOMERO LOPEZ MEM SVH2	195	BD6136534	6919 PARKWAY BLVD	LAND O LAKES	FL	34639
FED PRISON CMP BRYAN	115	BF1742332	1100 URSULINE	BRYAN	TX	77803
FED DETENTION CNT OAKDALE	115	BF2225589	POB BOX 5060 E WHATLEY RD	OAKDALE	LA	71463
FCI THREE RIVERS	115	BF2295017	PO BOX 4000 HWY 72 WEST	THREE RIVERS	TX	78071
FED DETENTION CNT MIAMI	195	BF3780219	33 NE 4TH STREET	MIAMI	FL	33132
FED CORR CMP COLEMAN	195	BF4461783	811 NE 54TH TERRACE	COLEMAN	FL	33521